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SENATE MEMORIAL 43

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Lynda M. Lovejoy

A MEMORIAL

REQUESTING THE TAXATION AND REVENUE DEPARTMENT AND THE
VETERANS' SERVICES DEPARTMENT TO STUDY WHETHER NATIVE AMERICAN
VETERANS HAVE HAD STATE PERSONAL INCOME TAXES IMPROPERLY
WITHHELD FROM THEIR ACTIVE DUTY MILITARY PAY, AND IF SO, TO
CONSIDER THE FEASIBILITY OF ESTABLISHING A PROGRAM OF
APPROPRIATE COMPENSATION.

WHEREAS, Native Americans have had a long history of
serving their country through active duty in the armed forces of
the United States during periods of both war and peace; and

WHEREAS, Native American veterans have made great
sacrifices in serving their country through active duty in the
military during periods of war and peace; and

WHEREAS, Native American veterans domiciled on tribal
lands during their periods of active military service may have

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1 been exempt from paying state personal income taxes on their
2 military income; and

3 WHEREAS, Native American veterans domiciled on tribal
4 lands during their periods of active military service may have
5 had state personal income taxes improperly withheld from their
6 military income; and

7 WHEREAS, Native American veterans who may have had state
8 personal income taxes improperly withheld from their military
9 income were unaware until recent years that such taxes may have
10 been improperly withheld; and

11 WHEREAS, New Mexico's statutes limit applications for
12 personal income tax refunds to the three-year period following
13 the tax year in question; and

14 WHEREAS, in a lawsuit filed in federal district court
15 seeking a refund for Native American veterans of improperly
16 withheld state personal income taxes, all but eleven of the
17 plaintiffs were barred from recovery due to the state's three-
18 year statute of limitations; and

19 WHEREAS, many other Native American veterans are now
20 barred by the state statute of limitations from claiming
21 refunds of state personal income taxes that may have been
22 improperly withheld from their military income; and

23 WHEREAS, even if not barred by the statute of limitations,
24 the passage of time extending to decades will make it difficult
25 for many Native American veterans to meet strict standards of

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1 proof that they are entitled to a refund of improperly withheld
2 state personal income taxes; and

3 WHEREAS, it is incumbent upon the state to ensure that it
4 was not unjustly enriched by the improper withholding of state
5 personal income taxes from Native American veterans; and

6 WHEREAS, the state should investigate feasible means of
7 refunding the Native American veterans any state personal
8 income taxes that were improperly withheld from military pay;

9 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE
10 OF NEW MEXICO that the taxation and revenue department and the
11 veterans' services department be requested to conduct a study
12 on the question of whether Native American veterans who were
13 domiciled on tribal lands during the period of their active
14 military duty had state personal income taxes improperly
15 withheld from their pay; and

16 BE IT FURTHER RESOLVED that if the taxation and revenue
17 department and the veterans' services department determine that
18 Native American veterans who were domiciled on tribal lands
19 during the period of their active military duty may have had
20 state personal income taxes improperly withheld from their pay,
21 that they consider the feasibility of establishing a state
22 program to compensate Native Americans who had state personal
23 income taxes improperly withheld from military income while on
24 active duty; and

25 BE IT FURTHER RESOLVED that the taxation and revenue

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1 department and the veterans' services department present their
2 findings and recommendations to the appropriate interim
3 legislative committees by October 1, 2008; and

4 BE IT FURTHER RESOLVED that copies of this memorial be
5 transmitted to the governor, the secretary of taxation and
6 revenue, the secretary of veterans' services, the president of
7 the Navajo Nation, the speaker of the Navajo Nation council,
8 the president of the Jicarilla Apache Nation, the president of
9 the Mescalero Apache Tribe and the governors of the nineteen
10 Indian pueblos.

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